MST

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SECOND APPEAL NO.193 OF 2007
WITH
CIVIL APPLICATION NO.408 OF 2007
WITH
CIVIL APPLICATION NO.1206 OF 2007
IN
SECOND APPEAL NO.193 OF 2007

WITH
SECOND APPEAL NO.228 OF 2007
WITH
CIVIL APPLICATION NO.486 OF 2007
IN
SECOND APPEAL NO.228 OF 2007

Dhanpal Bapu Chougule Appellant
versus
Smt.Indubai Bapu Chougule Respondent

Mr.T.S.Ingale for appellant.
Mr.Vijay Killedar for respondents 1 and 2.

CORAM : A.M.KHANWILKAR, J.

DATE : 11th September 2007

PC :

1. Heard counsel for the parties. In my opinion, the substantial questions of law in both the matters would be overlapping, as is rightly contended by the counsel for the appellant herein. According to the appellant, following substantial questions of law would arise for

consideration :-

"(i) Whether the plaintiff can have any right to claim possession over the suit lands independently than his mother the defendant no.1 and claim decree for perpetual injunction restraining them from disturbing or obstructing the plaintiff's peaceful possession and enjoyment of the suit lands without following due process of law?

(ii) Whether the plaintiff's possession over the suit lands can be said to be referable to lawful title based on the registered will executed by Appu dated 8th December 1980 in respect of the suit lands bequeathing in favour of plaintiff particularly when at the time of death deceased Appu was residing with plaintiff and the suit lands were in possession in cultivation of the plaintiff?"

2. Having considered the material on record as it is common ground that the Will was executed by Appu on 8th October 1970 which was relied upon by the respondent no.1 in her suit filed for injunction before the Trial Court; from the stipulations provided therein it appears that Appu has bequeathed the property in favour of the appellant but subject to condition that the respondent no.1 would be entitled to enjoy the property during her life time. The Appellate Court in the suit filed by the respondent no.1 in para 9 has positively found that the appellant herein (defendant in that suit) was cultivating the suit land but then goes on to observe that

MST

such possession of the appellant was for and on behalf of plaintiff (respondent no.1). The assumption of the Courts below appears to be that the respondent no.1 became owner of the suit property after the death of Appu. Both the parties have filed separate suits for injunction on the basis of title. In such situation, in my opinion, therefore, both the appeals deserve to be admitted as it raise substantial questions of law referred to earlier. Besides, during pendency of the appeals, the parties will have to maintain status-quo as of today with regard to the suit property. Going by the finding recorded by the Appellate Court, which has not been challenged, it does appear that it is the appellant who was cultivating the suit land. In the circumstances, I am inclined to assume, prima facie, that the appellant is in possession of the suit land and the status-quo order which has been passed is in that context.

3. As short question is involved and as respondent no.1 is a senior citizen, the hearing of both the appeals will have to be expedited. The same be listed peremptorily on 19th November 2007 for hearing.

MST

4. Place Civil Application No.1206 along with these appeals.

5. Civil Application Nos.408 of 2007 and 486 of 2007 are disposed of in view of the above order. No order as to costs.

(A.M.KHANWILKAR, J.)